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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF:	:	
Naokazu TAKEDA, et al.	: GROUP ART UNIT: 1648	
SERIAL NO.: 09/926,799	:	
FILED: DECEMBER 20, 2001	: EXAMINER: WINKLER	

FOR: SRSV DETECTION KIT

PETITION TO THE COMMISSIONER UNDER 37 C.F.R. §1.181

COMMISSIONER FOR PATENTS
ALEXANDRIA, VA 22313-1450

SIR:

Petitioners respectfully petition the Commissioner to invoke supervisory authority in this application and to review and withdraw the Restriction Requirement of January 27, 2003, and, in view thereof, withdraw the Office Action mailed on July 2, 2003. The facts of this case are as follows.

A Restriction Requirement was mailed in this application on January 27, 2003 (a copy of which is attached herewith), asserting that the application contains inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1 (paper number 10, page 2). On the basis of this assertion, the Office required restriction as follows:

Group I: Claims 1-4 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO:1 or a partial peptide thereof;

Group II: Claims 1-4 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO:2 or a partial peptide thereof;

Group III: Claims 1-4 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO:3 or a partial peptide thereof;

Group IV: Claims 1-4 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO: 4 or a partial peptide thereof;

Group V: Claims 1-3, 5 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO: 5 or a partial peptide thereof;

Group VI: Claims 1-3, 5 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO: 6 or a partial peptide thereof;

Group VII: Claims 1-3, 5 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO: 7 or a partial peptide thereof;

Group VIII: Claims 1-3, 5 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO: 8 or a partial peptide thereof;

Group IX: Claims 1-3, 5 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO: 9 or a partial peptide thereof;

Group X: Claims 1-3, 5 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO: 10 or a partial peptide thereof;

Group XI: Claims 1-3, 5 and 6, drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO: 11 or a partial peptide thereof;

Group XII: Claim [7], drawn to an nucleic acid sequence comprising SEQ ID NO:15;

Group XIII: Claim [8], drawn to an nucleic acid sequence comprising SEQ ID NO:20;

Group XIV: Claim [9], drawn to an nucleic acid sequence comprising SEQ ID NO:21; and

Group XV: Claim [10], drawn to an nucleic acid sequence comprising SEQ ID NO:22.

A Response was timely filed on February 27, 2003, electing, with traverse, Group I, Claims 1-4 and 6 (drawn to an antibody that recognizes a peptide having 80% homology with SEQ ID NO: 1 or a partial peptide thereof), solely for the purpose of compliance to the outstanding Restriction Requirement. A copy of the Response as filed February 27, 2003, is

attached herewith.

The Restriction Requirement was properly traversed on the grounds that the Office has mischaracterized the present invention. In particular, Petitioners noted that the Office restricted the detection kit into many "distinct" groups. To support the Restriction Requirement, the Office characterized Claim 1 to include many severable SRSV detection kits: i.e., a SRSV detection kit comprising solely an antibody against peptide (a), a SRSV detection kit comprising solely an antibody against peptide (b), and so on. However, Petitioners noted in their traversal that this characterization by the Office is incorrect as present Claim 1 is a detection kit which includes antibodies against *each* of peptides (a) through (k) (For the Office's convenience the pending claims are reproduced as Exhibit A, appended herewith). As such, these peptides cannot be severed from each other as in the Restriction Requirement, since the detection kit as a whole constitutes "the special technical feature." To require election in this case would so sever the invention that it would no longer resemble that which was contemplated by the Petitioners.

An Official Action on the merits was mailed in this application on July 2, 2002, making the Restriction Requirement final. In making the Restriction Requirement final the Examiner has stated that a serious burden would exist to search all sequence set out in the claims in one application. The Examiner further states that "although applicants have claimed the individual antibodies directed to many different peptides as a single kit, the search for each antibody component requires a separate search of the prior art" (paper number 13, page 2). Petitioners once again note that the Office has mischaracterized the present invention. Contrary to the Office's apparent interpretation, the claims do not merely provide a list of *alternative* antibodies, but rather a kit comprising 4 (see Claim 4), 7 (see Claim 5), or 11 (see Claim 1) different antibodies against SRSV-related viruses constituting peptides (a) throught (k).

Petitioners submit that to permit the continuance of examination under the standard employed in the Restriction Requirement and maintained in the Office Action, would rob them of full examination on the merits of that which they have invented. For example, MPEP §2131 sets forth the standard for determining anticipation and states that in order for a reference to anticipate an invention, the reference "must teach *every* element of the claim." As stated above, the claims require 4 (see Claim 4), 7 (see Claim 5), or 11 (see Claim 1) different antibodies against SRSV-related viruses. Each of these antibodies constitutes an "element" of the claim and, as such, in order to anticipate the claimed kit a single reference must teach *every* one of these elements.

This standard has not been employed in the outstanding Office Action as the Office has not provided any reasonable basis to conclude that the art of record would anticipate and/or render obvious any thing other than, perhaps, antibodies to the peptide of (a). Again, Petitioners note that their kit is *not restricted* to antibodies to the peptide of (a), but rather the kit contains at least 3 addition antibodies (see Claims 1 and 4).

For the reasons stated above, the Examiner has made out a proper Restriction Requirement under any standard, much less to provide adequate support to make the Restriction Requirement final or to commence examination on less than what Petitioners have invented.

Accordingly, Petitioners respectfully petition the Commissioner to invoke its supervisory authority in this application and to review and withdraw the Restriction Requirement of January 27, 2003, and, in view thereof, withdraw the Office Action mailed on July 2, 2003.

An early and favorable indication of such action is earnestly solicited.

Respectfully submitted,

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